

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

DAVID DAVIS and SUSAN DAVIS,

Plaintiffs,

Civ. No. 12-166-CL

TEMPORARY RESTRAINING ORDER

v.

BAC HOME LOANS SERVICING LP
and RECONTRUST COMPANY, N.A.,

Defendants.

PANNER, J.

Plaintiffs seek an ex parte temporary restraining order to enjoin the foreclosure sale of their house. Plaintiffs allege the house is scheduled for a foreclosure sale on February 6, 2012 and defendants have not complied with the legal requirements for a valid non-judicial foreclosure. Specifically, plaintiffs allege defendants failed to record all assignments of the trust deed in the county land records prior to initiating the foreclosure proceedings. In Oregon, a party initiating non-judicial foreclosure proceedings must record all assignments of the trust deed. ORS 86.735(1); Hooker v. Northwest Trustee Services, Inc., 2011 WL 2119103, *3 (D. Or. May 25) (citing Burgett v. MERS, 2010

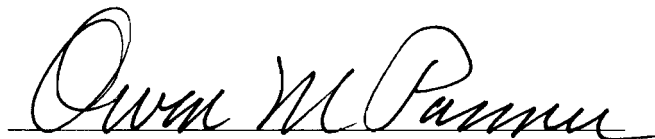
WL 4282105, at *2 (D. Or. Oct. 20) and In re McCoy, 2011 WL 477820, at *3-4 (Bankr. D. Or. Feb. 7)). Plaintiffs allege MERS is listed as the beneficiary on the deed of trust at issue.

Because of the alleged imminent foreclosure sale, and because the presence of MERS demonstrates a high probability that defendants did not comply with the recording requirements of the Oregon Trust Deed Act, I grant plaintiff's request for a temporary restraining order (#3).

Defendants, and their officers, agents, etc..., and other persons in active concert or participation with defendants, who receive actual notice of this order, are restrained from conducting a foreclosure sale for the following property: 624 S. Ivy Street, Medford, Oregon, from this day until February 17, 2012, at 5:00 p.m. This court will hold a hearing on whether to issue a preliminary injunction at 10:00 a.m. on February 17, 2012, in Medford.

IT IS SO ORDERED.

DATED this 3 day of February, 2012 at 10:00 a.m.

A handwritten signature in black ink, appearing to read "Owen M. Panner", written over a horizontal line.

OWEN M. PANNER
U.S. DISTRICT JUDGE